

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/09/2003

CORAM

THE HON'BLE MR.JUSTICE R.JAYASIMHA BABU
and
THE HON'BLE MR.JUSTICE S.K.KRISHNAN

W.A.No.126 of 2003

The Madras Medical Mission,
4-A Dr.J.J.Nagar,
Mugappair,
Chennai-50,
rep. By its Hon. Secretary
K.V.George. ..Appellant

-Vs-

1.Dr.K.M.Churian
2.The Deputy Inspector General
of Registration,
Office of the Deputy Inspector
General of Registration,
Chennai Zone,
Chennai-1. ...Respondents

Appeal against the order of the learned single Judge, dated 13.11.2002, passed in W.P.No.35565 of 2002.

!For Appellant : Mr.Sriram Panchu,
Senior Counsel for
Mr.V.Achuthan

^For 1st Respondent : Mr.C.Ramakrishnan for
Mr.S.Vishnu Mohan

For R-2 : Mrs.N.G.Kalaiselvi,
Spl. G.P.

:JUDGMENT

(Delivered by R.JAYASIMHA BABU, J.)

The appellant is a society registered under the Tamil Nadu Societies Registration Act, 1975. One of it's members, Dr.K.M.Churian, filed a writ petition on 12.9.2002 in W.P.No.35565 of 2002. In the affidavit filed in support of that petition, he had, inter alia, averred thus:

"I am constrained to file this writ petition because of the refusal of the Secretary, Mr.K.V.George, to permit me to scrutinise the books of accounts of the society. Section 29 (3) of the Tamil Nadu Societies Registration Act of 1975 clearly gives a mandatory right for this scrutiny by any member, in fact free of charge too. Equally so, with respect, I submit that Section 29 (1) gives the right to scrutinise the Minutes of all proceedings of meetings of a society by any member. Most importantly, if I were to submit, with respect, I am a member of the General Body and the Chairman of the ICVD from its inception and I have every right to scrutinise the accounts.

....

It is submitted that as per Section 29 of the Act, it is explicit that the books of every registered society shall be open to inspection to the members during business hours free of charge. This access has been denied to the petitioner.

Therefore it is prayed that this Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ, direction or order directing the respondent to facilitate and enable the petitioner to access of books of accounts and the minutes of meetings for a thorough scrutiny by the petitioner forthwith and pass any further order/ orders as may be deemed fit and necessary in the circumstances of the case and thus render justice."

2. Section 29 (3) of the Act, which was referred to in the affidavit filed in support of that writ petition reads thus:-

"Section 29. Minutes of proceedings of registered society's general meetings and of its committee.-- (1) Every registered society shall cause minutes of all proceedings of its general meetings and of its committee to be entered in books kept for the purpose.

(2) Any such minute, if purporting to be signed by the Chairman of the meeting at which the proceedings were held or by the Chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) The books containing the minutes aforesaid and the books of account of the registered society shall be kept at the registered office of the society and shall, during business hours be open to the inspection of any member free of charge."

3. The learned single Judge on 13.9.2002, the day following the filing of the writ petition, made an order which reads thus:-

"In the meanwhile, the respondent is directed to consider the representation of the petitioner, dated 12.9.2002 and issue appropriate orders to the concerned society viz., Madras Medical Mission exercising the powers conferred under Section 29 read with section 36 of the Societies Registration Act, of course, after hearing the concerned society and report the order passed on 19.9.2002."

The representation of 12.9.2002 referred to in that order is a letter addressed by the said Dr.K.M.Churian to the Registrar of Cooperative

Societies, wherein he had pointed out that as per Section 34-A of the Societies Registration Act the committee of the Madras Medical Mission should be superseded as there were certain irregularities in the management of the affairs violations of the Act and the rules.

4. After the interim order made by the learned single Judge, the society gave inspection of its books to the writ petitioner. That fact has been noticed by the learned single Judge in paragraph 3 of his order, which reads thus:-

"The respondent, complying with the said direction of this Court, dated 13.9.2002, after giving notice to the society and based on the no objection from the society permitted the petitioner to inspect the books of account and the minutes of the meetings of the Society, viz., Madras Medical Mission, free of charge."

This should have been the end of the writ petition as all that was sought in the writ petition had in fact been granted by way of interim order and the fact that compliance with that interim order was also brought to the notice of the Court and had been duly recorded.

5. However, matters did not stop there. A submission appears to have been made before the learned single Judge by the learned counsel for the writ petitioner that a further direction should be given--a direction which had not been sought in the writ petition and in support of which no foundation whatever had been laid in the affidavit--that the Registrar should permit the writ petitioner to have the " assistance of his auditor" while inspecting the books of account of the society as the petitioner was not familiar with accounts. That prayer was granted by the impugned order. We must notice here that the party affected by that order, viz., the society, was not a party to the writ petition and the society was not heard before that direction was given. Though the direction sought was not to the Society, what was in fact done was to subject the accounts of the society to the scrutiny of an outsider whose only qualification for entering the premises of the society was the fact that he was the auditor of Dr.K.M.Churian.

6. The learned single Judge, after adverting to the provisions contained in Section 29 of the Act held thus:-

Reading down Section 29 (3) of the Act and keeping in mind the object and spirit of the legislature in enacting Section 29 (3) of the Act, I am satisfied that the request of the learned Senior Counsel for the petitioner to permit the petitioner to have the assistance of the auditor, while inspecting the books of account of the society, is reasonable and justified."

7. It was submitted before us by the appellant's learned Senior Counsel Mr.Sriram Panchu that the order of the learned single Judge is contrary to the provisions of the Tamil Nadu Societies Registration Act, as Section 29 only confers a right on a member to inspect the books of account and does not confer any right on the member to have an auditor of his choice accompany him and inspect the books of account of the society. It was

submitted that under the scheme of the Act, the society is required to maintain accounts and have the same audited by a qualified auditor, who shall be a Chartered Accountant; that the audited accounts are required to be placed before the general body and further that copies of those accounts are also required to be filed with the Registrar of Societies all of which, it was submitted, have been done year and after year and that there has been no objection whatever from any quarter with regard to the audit of the accounts of the society.

10. The right conferred on a member, it was submitted, is limited to what has been specifically spelt out in Section 29 of the Act, which does not refer to anyone other than a 'member', as a person who is to be given inspection of the books of account of the society. It was submitted that this is obviously so because the affairs of an association which comprises of members who have willingly come together in pursuit of a common object, are affairs with which only the members of that body are concerned, and is not a matter for scrutiny by any outsider except the regulatory authorities under the law under which the society is registered.

11. The Societies Registration Act imposes an obligation on the society to maintain accounts in the manner laid down in the Act; to have the same audited at periodical intervals as specified in the Act, by a person possessing the prescribed qualification. It is the collective body of members who appoint the auditor when they meet in the Annual General Meeting and it is at that meeting that every member is entitled to seek any clarification or explanation that he may wish to have with regard to the accounts. Further, a member is entitled to receive a copy of the receipt and expenditure account as also of the balance sheet which he may scrutinise and regarding which he may also obtain such further information as may be necessary when the general body meets and, even otherwise, by making out a case for seeking such information at any other time.

12. The further submission was that recognising a right in a member to assert a right to inspect the books of account of an association along with the auditor of his choice would bring the function of the society to a stand still and cantankerous members in societies will adopt that device with a view to throw a spanner into the working of the society. In any association which has a committee which is required to be elected, there are winners and losers and those who do not acquire control by the mode prescribed are likely to nurse grievances in aid of which this device of having all the accounts re-examined by the auditors of their choice is likely to be resorted to.

13. On the facts of this case, it was submitted that the person who is seeking to have his auditor brought in is the person who was himself at all times a member of the Board of the society from its very inception and who was always fully aware of all the accounts of the society as the accounts of the society are placed before the committee and is scrutinised by the committee before it is sent to the auditor and these accounts are also signed by the office bearers of the committee. The auditor who audits the accounts of the committee is a person who is appointed at the annual general meeting and who has the qualification which the Rules require that he possess viz., membership

of the Institute of Chartered Accountants of India, constituted under the Chartered Accountants Act, 1949.

14. It was further pointed out by the learned counsel for the appellant that the auditor appointed by the society having performed his role there is no scope at all for anyone to assert a right to bring his own auditor to re-audit what the auditor appointed by the society had already done.

15. Learned counsel also referred to the previous litigations between the parties, which have gone on uninterruptedly for well over one and a half year in this court in different jurisdictions and at different levels, some of which have culminated in judgments by Division Benches of this Court, wherein the origin of the disputes between the parties as also the manner in which the writ petitioner had conducted himself at different stages in relation to the functioning of the society, have been set out.

16. Mr. Ramakrishnan, learned Senior Counsel for the writ petitioner submitted that he would confine himself to the legal point with regard to the scope of Section 29 of the Act. It was his submission that that section does not prohibit a member from having his own auditor accompany him when he inspects the books of accounts, and in the absence of explicit prohibition in the Act, it would be permissible for the Court to direct the Registrar to permit an auditor to accompany the member, who is desirous of inspecting the accounts of the society. Learned counsel also submitted that accounts is a specialised area of knowledge with which most laymen are not well conversant even if they be very competent in their chosen fields, and that for a proper understanding of the accounts the assistance of a person who is a professional auditor and who is capable of understanding the significance of what is accounted, or is not accounted and the manner of accounting is very necessary.

17. Learned counsel for the writ petitioner further submitted that all is not well in the society and, according to his client, the accounts of the society badly require examination by an outside auditor. An alternative plea was also made that if, in the view of the Court the writ petitioner is not entitled to choose his own auditor, the court may appoint an outside auditor of its choice to audit the accounts of the society for such period as the court may specify in its order.

18. The Tamil Nadu Societies Registration Act is an Act which deals with societies. By taking resort to the procedures set out in the said Act, societies may register themselves and thereby obtain the benefits flowing from such registration. The grant of certificate of registration subjects the society to the regulatory control of the Registrar of the Societies, who has been conferred with ample and wide ranging powers with regard to inspection, enquiry, and winding up, all of which are dealt with in Chapter IV of the Act. Those powers of the registrar are to be exercised in an objective manner and on the basis of relevant materials, for the purpose of ensuring the proper functioning of the Societies registered under the Act.

19. The extent to which the individual members may assert rights, vis-a-vis the society, is regulated by the by-laws of the society as also by

the provisions of the Act and the Rules made thereunder. Every member has a right to attend the general meeting of the society. Every member has a right to receive proper notice of such meetings. Every member has a right to speak at such meetings, to vote on resolutions at such meetings, to stand for election if he so chooses, and to serve on the committee if elected. A member also has a right to be informed about the affairs of the society and that information is provided to the member by making available to him copies of the annual report, the balance sheet and the receipt and expenditure account. This is the extent of member's rights are recognised in the scheme of the Act and the Rules made thereunder.

20. The collective interest of the members is to be protected by members acting collectively in the general meeting. They may also petition the Registrar to have an enquiry made into the affairs of the society under Section 36 (1) of the Act. Section 36 (1), inter alia, recognises a right in the general body of members of the society, provided their number is not less than 1/3 of the total strength, to apply to the Registrar and request that an enquiry by the Registrar into the constitution, working and financial condition of a Registered Society be made. It is for the Registrar thereafter to decide as to whether an enquiry should be held and, after the enquiry is held, to decide upon the appropriate action to be taken. An enquiry into the affairs of the appellant society under that provision has already been caused to be made by the Registrar pursuant to the complaint made by the petitioner to the Government.

21. Section 29 of the Act refers to the books of account of a registered Society. The rules framed under the Act spell out what those books of account are. Rule 18 refers to the cash book, the receipt book, the vouchers, the ledger as also the monthly register of receipts and disbursements. Section 16 of the Act obligates every association to keep proper books of account and have the same audited by an auditor or by two or more members of the registered society (not being members of the committee), appointed by the registered society and possessing the prescribed qualifications. The qualification prescribed in case of an auditor, in Rule 21 of the Rules, is that the auditor chosen must be a member of the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949.

22. Section 29 (3) of the Act requires the society to keep at its registered office the minutes of the books of account and further provides that such books shall, during business hours, be open to the inspection of any member free of charge. Section 17 of the Act entitles every member, on application and on payment of such fee as may be prescribed, to a copy of the bylaws of the society, of its receipts and expenditure accounts, as also of its balance sheet.

23. Thus, the right conferred by Section 29 (3) of the Act is a right given to a member and none else. No member can assert a right to insist upon an auditor accompanying him when he chooses to inspect the books of account of the society. The collective interest of the members is protected by the audit carried out by the auditor appointed by the members at the general meeting.

Members individually have no right to appoint an auditor, or have a reaudit made by an auditor of their choice, or have their auditor examine the books of the society.

24. The right to form associations is a right guaranteed to every citizen under Art.19 (1) (c) of the Constitution. The right to form an association includes the right to continue the association as held by the Constitution Bench of the Supreme Court in the case of *Damayanti Narayan v. Union of India* (1991 (1) SCC 678). It was also held by the Court in that case that the right to form an association implies that the person forming the association have also the right to be associated with only those whom they voluntarily admit into the association.

25. Thus, in a voluntary association it's voluntary character is required to be preserved and that voluntary character sets the limits on the rights which are exercisable by each member. The affairs of the association are matters for self regulation by the members in accordance with the bylaws which they have chosen to adopt. Those bylaws, of course, will have to be in conformity with the provisions of the Act under which they have chosen to register the society. Such registration, however, will not have the effect of enabling each and every member to introduce a stranger into the voluntary association and insist that such stranger be permitted to look into the books of account and financial condition of the society. Such a position is alien to the object of the Act to the nature of the right conferred on the individual members of the society.

26. We are, therefore, unable to approve the view adopted by the learned single Judge regarding the scope of Section 29 of the Act. Section 29 does not enable a member to bring in an auditor of his choice merely because the section gives to the 'member' a right to inspect the books of the society.

27. We cannot also sustain the order under appeal for the reason that the relief that had been sought in the writ petition having been granted by the interim order and the society having abided by that order, no further direction, especially a direction prejudicially affecting the society could have been given without notice to and without hearing the society.

28. We must also advert to the submission made by the learned counsel for the respondent that even if a member does not have the right to take the assistance of an auditor of his choice, this Court has ample powers to direct reaudit of the society's accounts and that that power should be exercised having regard to the circumstances of this case, even though the accounts of the society have not been placed before the Court at all.

29. A court of law does not deprive parties of their rights merely on the basis of surmises and speculation. In the absence of any pleading and material, this submission does not deserve any consideration and is rejected. The writ appeal is allowed.

Index: Yes

Website: Yes

To

The Deputy Inspector General
of Registration,
Office of the Deputy Inspector
General of Registration,
Chennai Zone,
Chennai-1.

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